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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 84

STATE OF OKLAHOMA, PETITIONER,

vs.

UNITED STATES CIVIL SERVICE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1946.

CERTIORARI GRANTED MAY 27, 1946.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 3203

STATE OF OKLAHOMA, Appellant,

vs.

UNITED STATES CIVIL SERVICE COMMISSION, Appellee

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL—Filed August 6, 1945

Comes now the Appellant, the State of Oklahoma, and states that the points on which it intends to rely on appeal are as follows:

1. That the Court erred in concluding as a matter of law that it had no authority to set aside the arbitrary and unjust order of the United States Civil Service Commission.

2. That the Court erred in concluding as a matter of law that the Hatch Political Activities Act is constitutional and valid.

3. That the judgment of the Court is erroneous in that the acts complained of were not "pernicious" and do not constitute a violation of the Hatch Political Activities Act.

4. That the judgment of the Court is erroneous in that if the acts complained of are violative of the Hatch Political Activities Act such violation because of mitigating circumstances did not warrant the drastic order requiring the removal of France Paris from office, or if not removed the penalizing of the sovereign State of Oklahoma.

5. That the Court erred in sustaining the order of the United States Civil Service Commission in that said order was arbitrary and constituted an abuse of discretion, and therefore was contrary to law.

[fol. 2] 6. That the judgment of the Court is contrary to the findings of fact, is contrary to law, is unjust, and constitutes a miscarriage of justice.

Randell S. Cobb, Attorney General of Oklahoma; Mainard Kennerly, Assistant Attorney General, State Capitol, Oklahoma City 5, Oklahoma, Attorneys for Appellant.

AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,
Oklahoma County, ss:

Della Baldwin, Being Duly Sworn on Oath, deposes and says that on the 3rd day of August, 1945, she enclosed a copy of the attached statement of points on which appellant intends to rely on appeal in an envelope addressed to Attorney General of the United States, Washington, D. C.

Lawrence V. Meloy, Attorney, U. S. Civil Service Commission, Washington, D. C.

Whitfield Y. Mauzy, U. S. Attorney, Federal Building, Tulsa 3, Oklahoma, with postage thereon fully prepaid, and deposited the same in the United States post office at the State Capitol, in Oklahoma City, Oklahoma.

Della Baldwin.

Subscribed and sworn to before me this 3rd day of August, 1945. Effa Alexander, Notary Public. My commission expires: 10-28-1948. (Seal.)

[File endorsement omitted.]

[fol. 3] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

Pleas and Proceedings Before the Honorable F. E. Kennamer, United States District Judge in and for the Northern District of Oklahoma, Presiding in the Following Entitled Cause, To-wit:

No. 1279. Civil

STATE OF OKLAHOMA, Plaintiff,

vs.

UNITED STATES CIVIL SERVICE COMMISSION, Defendant

PETITION—Filed September 22, 1944

Comes now the petitioner, the State of Oklahoma, and complains against the respondent, the United States Civil Service Commission, and for grounds of complaint alleges and states:

1. That the respondent, the United States Civil Service Commission, filed a certain "Letter of Charges" against France Paris and the State of Oklahoma, and the same was entered as Docket No. 122 before the United States Civil Service Commission; that said Letter of Charges charged that France Paris, member of the State Highway Commission of the State of Oklahoma, had violated Section 12(a) and Section 15 of the Hatch Political Activities Act, 18 U. S. C. A. §§ 61-L and 61-O, in that while serving as Member of the State Highway Commission of the State of Oklahoma he also held the position of Chairman of the State Democratic Central Committee and took an active part in the political management of the Democratic Party of the State of Oklahoma by assisting in the sale of tickets for a banquet known as the Oklahoma Victory Dinner held in Oklahoma City on June 14, 1943; that said Letter of Charges was filed on the 12th day of October, 1943, and the said France Paris resigned as Chairman of the State Democratic Central Committee on October 18, 1943.

[fol. 4] 2. That the said France Paris, Member of the State Highway Commission, and the State of Oklahoma, filed separate Amended Answers to said Letter of Charges, in substance admitting the allegations of fact contained in

said Letter of Charges but denying the conclusions of law contained in said Letter of Charges, and denying that the allegations of fact contained in said Letter of Charges constituted a violation of the Hatch Political Activities Act, 18 U. S. C. A. § 61-L, subsections (a) and (b), and specifically alleging that the provisions of Sections 12a and 12b of the Hatch Political Activities Act, 18 U. S. C. A. § 61-L, subsections (a) and (b), are not within any of the powers delegated to Congress by the Constitution of the United States, but purport to regulate the internal affairs of a sovereign State in violation of the Tenth Amendment to the Constitution of the United States, that the delegation of powers by said Act to the United States Civil Service Commission and that the enforcement of said Act by the United States Civil Service Commission constitute an unauthorized delegation of powers. Said Answers specifically alleged that if the allegations of fact contained in the Letter of Charges were held to constitute a violation of Sections 12a and 12b of the Hatch Political Activities Act, 18 U. S. C. A. § 61-L, subsections (a) and (b), and if said provisions were held constitutional, that said violation did not warrant the removal of the said France Paris from the office of Member of the State Highway Commission or the subjection of the State of Oklahoma to any penalty as provided in said Act.

3. That thereafter the parties to said proceeding, the United States Civil Service Commission, France Paris, and the State of Oklahoma, entered into a Stipulation of Facts, which this petitioner alleges clearly showed that the said France Paris was not guilty of pernicious political activity against which the Hatch Political Activities Act is directed; that said Stipulation of Facts showed that during the period from January 15, 1943, when France Paris took office as Member of the State Highway Commission, and October 18, 1943, when he resigned as Chairman of the State Democratic Central Committee, there was no State election and no political campaign conducted in the State of Oklahoma; that [fol. 5] political activity in Oklahoma during said period was virtually quiescent; that ten days before assumption of his duties as Member of the State Highway *Commission* the said France Paris closed the State Headquarters of the Democratic Party and turned over its affairs to the Vice-Chairman; that the only political activity during said period of time was confined to the Victory Dinner and Paris's par-

ticipation in said dinner was slight and the stipulation in no way tends to show that he had any active, coercive connection therewith, or that he had any connection with the solicitation of funds for the Democratic Party from employees of the State Highway Department; that upon learning that the United States Civil Service Commission questioned his right to hold both positions, Member of the State Highway Commission and Chairman of the State Democratic Central Committee, the said France Paris indicated a desire to resign as Chairman of the State Democratic Central Committee and did resign as such Chairman on October 18, 1943.

4. That on the 7th day of September, 1944, upon the aforesaid Letter of Charges, separate Amended Answers of France Paris and the State of Oklahoma, and the Stipulation of Facts entered into by all of the parties, the United States Civil Service Commission entered its order in said proceeding styled "In the Matter of France Paris and the State of Oklahoma Docket No. 122" finding that the said France Paris had violated the Hatch Political Activities Act and that the violation warranted his removal as Member of the State Highway Commission of the State of Oklahoma; that said order was concurred in by only two members of the United States Civil Service Commission, Commissioners McMillin and Flemming. President Mitchell of said Commission prepared and filed a written dissent to said order; That the United States Civil Service Commission mailed its notice of such order or determination to the Attorney General of the State of Oklahoma on the 7th day of September, 1944; that Subsection (c) of Section 12 of the Hatch Political Activities Act, 18 U. S. C. A., § 61-L-sub-section (c) provides:

"Any party aggrieved by any determination or order of [fol. 6] the Commission under subsection (b) may, within thirty days after the mailing of notice of such determination or order, institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides; but the commencement of such proceedings shall not operate as a stay of such determination or order unless (1) it is specifically so ordered by the Court, and (2) such officer or employee, is suspended from his office or employment during the pendency of such proceedings. A copy of

such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the Court a transcript of the record upon which the determination or the order complained of was made. The review by the Court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to question of fact and questions of law. * * * "

That the said France Paris resides in the City of Tulsa in the Northern Judicial District of the United States for the State of Oklahoma; that the State of Oklahoma is aggrieved by the aforesaid determination and order of the United States Civil Service Commission in that unless the said France Paris is removed as Member of the State Highway Commission Federal Funds for highway construction equal to two years compensation of France Paris as Member of the State Highway Commission will be withheld from the State of Oklahoma.

5. Petitioner, the State of Oklahoma, asks this Court to review the record upon which the United States Civil Service Commission entered its order herein complained of. Petitioner alleges that said order should be vacated and set aside for the following reasons:

A. Sections 12a, 12b, 12c, and 15 of the Hatch Political Activities Act, 18 U. S. C. A. §§ 61-L, Subsections (a), (b) and (c) and *61-O* are not within any of the powers delegated to Congress, by the Constitution of the United States but purport to regulate the internal affairs of the States in violation of the Tenth Amendment to the Constitution of [fol. 7] the United States. Particular attention is directed to 18 U. S. C. A. § 61-L, subsection (c) which attempts to vest in this Court the power to suspend a State Officer from his office. Further, it was never intended by the Constitution of the United States that Congress could impose penalties upon the sovereign States of the Union.

B. The delegation of powers by said Hatch Political Activities Act to the United States Civil Service Commission and the enforcement of said Act by the United States Civil Service Commission constitute an unauthorized delegation of power. It is an unlawful encroachment upon the judiciary and denies the right of trial by jury.

C. If the statutes involved be constitutional the acts complained of do not constitute a violation thereof. As shown by the title of said Act of Congress the Hatch Political Activities Act was "An Act to prevent pernicious political activities. * * *" There is no evidence of pernicious political activity in the record on the part of the said France Paris.

D. If the Act be constitutional and the matters complained of be a violation thereof, such acts are insufficient to warrant the issuance of the removal order by the United States Civil Service Commission. The United States Civil Service Commission abused the discretion vested in it by 18 U. S. C. A. § 61-L, sub-section (b) when it found that the facts in this case warranted the removal of the State Officer from his office. The violation if any is too trivial to support an order of ouster from office.

6. That a certified copy of this petition has been forwarded to the United States Civil Service Commission, Washington, D. C., by registered mail.

Wherefore, Petitioner, the State of Oklahoma, prays that this Court review the record in the proceedings entitled In the Matter of France Paris and the State of Oklahoma, Docket No. 122, before the United States Civil Service Commission, and vacate or cause to be vacated the Order of [fol. 8] said Commission dated September 7, 1944, and for such other and further relief as to the Court seems proper.

Randell S. Cobb, Attorney General of Oklahoma;
James W. Bounds, Assistant Attorney General,
State Capitol, Oklahoma City, Oklahoma, Attorneys for Petitioner, State of Oklahoma.

[File endorsement omitted.]

Excerpts from Record from U. S. Civil Service Commission

BEFORE THE UNITED STATES CIVIL SERVICE COMMISSION

In the Matter of FRANCE PARIS and THE STATE OF OKLAHOMA. Letter of Charges Docket No. 122

LETTER OF CHARGES

The United States Civil Service Commission being in receipt of information which warrants, under the provi-

sions of Section 12 of the Act of August 2, 1939, as amended, July 19, 1940, 54 Stat. 767 (U. S. Code, Title 18, Section 61 1), hereinafter referred to as the Act, an investigation of improper political activity on the part of France Paris, an employee of the State of Oklahoma, does hereby issue its Letter of Charges setting forth a summary of alleged violations all of which occurred in the State of Oklahoma.

Wherever the term "political party" appears in this Letter of Charges, said term political party means a political party whose candidates for presidential electors received votes in the last preceding election at which presidential electors were selected. Whenever the term "political campaign" is used in this Letter of Charges, said term means the political campaign of a political party as described in the preceding sentence. Whenever the term "political management" is used in this Letter of Charges, said term political management means the management of the activities of a political party as defined above.

[fol. 9] It is charged:

I

That since January 14, 1943, France Paris has been and now is an employee and officer of the State of Oklahoma and as such, his principal employment was and now is in connection with an activity financed in whole or in part by loans and grants made by the United States and by a Federal agency thereof.

II

That on or about January 14, 1943, the said France Paris was appointed and did assume office as a member of the Highway Commission of the State of Oklahoma; that at said time France Paris was the Chairman of the Democratic State Central Committee of the Democratic Party of the State of Oklahoma, a political party office; that said France Paris did not immediately resign from said political party office after assuming office as a member of the Highway Commission of the State of Oklahoma, but to the contrary, thereafter continued to hold and exercise the functions of the office of Chairman of the Democratic State Central Committee of the State of Oklahoma.

III

That on or about January 14, 1943 the said France Paris was appointed and did assume office as a member of the

Highway Commission of the State of Oklahoma; that at said time, France Paris was the Chairman of the Democratic State Central Committee of the Democratic Party of the State of Oklahoma, a political party; that said France Paris ever since has been and now is the Chairman of said Democratic State Central Committee, a political party office, the holding of which is prohibited by the Act.

IV

That since January 14, 1943, the said France Paris has engaged in political management of the Democratic Party, a political party, of the State of Oklahoma by and through his activities as Chairman of the Democratic State Central Committee.

[fol. 10]

V

That since January 14, 1943, the said France Paris has taken an active part in the political management of the Democratic Party, a political party, of the State of Oklahoma in that he assisted in the raising of funds on behalf of said party by the sale of tickets for and the giving of a banquet known as the Oklahoma Victory Dinner held in the City of Oklahoma on June 14, 1943.

All of which is in violation of Section 12(a) and Section 15 of the Hatch Political Activities Acts, 54 U. S. Statutes, 767, (U. S. Code, Title 18, Section 61).

Wherefore, the United States Civil Service Commission on this 12th day of October, 1943, issues this, its Letters of Charges, against France Paris and the State of Oklahoma.

United States Civil Service Commission, by Alfred Klein, Acting Chief Law Officer. (Seal)

Washington, D. C., October 12, 1943.
Filed 10-12-43. H. S.—Docket Clerk.

BEFORE U. S. CIVIL SERVICE COMMISSION

AMENDED ANSWER OF THE STATE OF OKLAHOMA

Comes now the State of Oklahoma, one of the parties named in the Letter of Charges filed herein, and for its

amended answer to said letter of charges, alleges and states:

I

The State of Oklahoma admits all of the material allegations of fact charged in said Letter of charges, and hereby waives a hearing on the allegations of fact contained therein.

II

The State of Oklahoma denies the conclusions of law contained in said letter of charges.

III

The State of Oklahoma denies that the allegations of fact contained in said letter of charges constitute a violation of the provisions of Section 12 of the Hatch Act, 18 U. S. C. A. § 61L, Subsections (a) and (b).

[fol. 11]

IV

The State of Oklahoma alleges that the provisions of Sections 12a and 12b of the Hatch Act, 18 U. S. C. A. § 61L, Subsections (a) and (b), are not within any of the powers delegated to Congress by the Constitution of the United States, but purport to regulate the internal affairs of a *soverign* State in violation of the Tenth Amendment to the Constitution of the United States; that the delegation of powers by said act to the Civil Service Commission and the enforcement of said act by the Civil Service Commission constitute an unauthorized delegation of powers.

V

In the event it should be held that the allegations of fact contained in the letter of charges filed herein *constite* a violation of Section 12a and 12b of the Hatch Act, 18 U. S. C. A. § 61L, Subsections (a) and (b), and in the event it is held that said provisions are constitutional, then the State of Oklahoma asserts that such violation does not warrant the removal of the said France Paris from office or the subjection of the State of Oklahoma to any penalty provided for therein.

Wherefore, the State of Oklahoma prays that the charges made by the United States Civil Service Com-

mission in its letter of charges, dated October 12, 1943, be dismissed, or that the Commission hold that the facts do not warrant the removal of the said France Paris from his office of Member of the State Highway Commission of Oklahoma, or that any penalty be assessed against the State of Oklahoma, and for such other relief as is proper.

The State of Oklahoma, by Randell S. Cobb, Attorney General; Paul Pugh, Assistant Attorney General.

Date Received 12-13-43. By H. Cunningham (Docket Clerk).

[fol. 12] BEFORE U. S. CIVIL SERVICE COMMISSION

STIPULATION OF FACTS

(Date Received 1-3-44. By H. Cunningham.)

Come now the Respondents, France Paris, represented and acting herein by and through Cheek, Gibson, Savage, and Benefield, his attorneys of record, and The State of Oklahoma, represented and acting herein by and through Randell S. Cobb, Attorney General, and Paul Pugh Assistant Attorney-General, attorneys of record for said State, and the United States Civil Service Commission, represented and acting herein by and through L. V. Meloy, attorney of record for said Commission, and respectfully show:

That pursuant to the provisions of Rule VII of the "Rules of Practice for Administration for Section 12 of the Act of August 2, 1939, as Amended," as promulgated and adopted by the United States Civil Service Commission, the Respondents, France Paris and the State of Oklahoma, have expressed a desire to waive a hearing on the allegations of fact set forth in the Letter of Charges and not to contest but to admit the material allegations of fact to be true.

It is, therefore, agreed, stipulated, and settled by and between the Respondents, France Paris and the State of Oklahoma, and the United States Civil Service Commission, that:

I

The Respondents, France Paris and the State of Oklahoma, expressly waive a hearing as provided for and

contemplated in the Rules of Practice under Rule VII as hereinabove designated.

II

France Paris was elected Chairman of the Democratic State Central Committee, State of Oklahoma, for his third term in February, 1942, and he occupied such position con-
[fol. 13] tinuously until October 18, 1943, the effective date of his resignation. (See letter from the Office of the Governor, State of Oklahoma, Exhibit No. 9, attached hereto).

III

France Paris was appointed as a member of the Highway Commission of the State of Oklahoma on or about the 14th day of January, 1943, and ever since has been and now is a member of the Highway Commission of the said State, receiving an annual compensation for his services at the rate of $5400.00. There are three members of the State Highway Commission and the powers and duties of the Highway Commissioners are prescribed by the provisions of 60 O. S. 1941, Paragraph 27.2, et seq. (See Exhibits No. 1 and 1-a, attached hereto.)

IV

The activities of the Highway Department of the State of Oklahoma are in part jointly financed by grants made by an agency of the Federal Government, towit: Public Roads Administration. That from January 15, 1943, through October 31, 1943, the State of Oklahoma expended for Highway activities the total sum of $8,435,634.39, of which the Federal Government contributed $2,762,673.45.

V

France Paris, while occupying the position of member of the Highway Commission, State of Oklahoma, simultaneously held and occupied the political party position of Chairman of the Democratic State Central Committee, State of Oklahoma.

VI

The "Victory Dinner" which was stated in the Silver Glade Room of the Skirvin Hotel, Oklahoma City, Oklahoma, on June 14, 1943, was under the general supervision of the Honorable Robert S. Kerr, Governor of the State of

Oklahoma. The details of the "Victory Dinner" were handled by a committee appointed by the Honorable Robert S. Kerr, of which W. G. Johnston was Chairman. France [fol. 14] Paris was an ex officio member of this Committee. He advised with the Governor and the committee concerning the dinner but was not active in planning and arranging it. He called the meeting to order, and introduced the Toastmaster. The "Victory Dinner" was designed to provide the National Democratic Committee and the State Democratic Committee with funds to discharge a deficit incurred by reason of their political activities and to provide the said party with funds for its further and contemplated political activities; also for the purpose of selling war bonds which resulted in the sale of approximately $14,500,000.00 of bonds to the citizens of the State of Oklahoma. The "Victory Dinner" also netted the Democratic Party, a political party, for its use and benefit, a sum in the approximate *sum* of $30,000.00. See Exhibit #7.

VII

The employees of the Highway Department of the State of Oklahoma received mimeographed sheets soliciting them to purchase tickets to the said "Victory Dinner"; it was suggested that the employees purchase the said tickets on the following basis:

$5.00 for Stenographers
10.00 for Assistant Department Heads
25.00 for Department Heads

The employees also received a voluntary pledge sheet pledging to purchase an equal amount in war bonds during the remainder of the year of 1943. The purchase of bonds was in connection with his purchase of tickets to the "Victory Dinner", such pledges were addressed to the Honorable Robert S. Kerr, Honorary Chairman of the State Committee War Saving Staff. (See Exhibits Nos. 8-a and 8-b.)

VIII

Howard Davis, an employee of the Purchasing Department of the Highway Commission, acted as Treasurer of the funds received from the sale of tickets for the "Victory Dinner," and kept books for the Democratic Party of the

[fol. 15] State of Oklahoma, wherein a record of such sales was maintained.

Howard Davis, for many years, had been a part time, paid bookkeeper for the Democratic Party of the State of Oklahoma, and was a part time, paid bookkeeper for said party at the time the duties with reference to the "Victory Dinner" were performed. These duties were performed at nights and on week-ends, at times when it did not interfere with his duties with the Highway Department.

IX

During the period from January 1 to October 18, 1943, the Democratic Party maintained its Central Committee office in the Wells Roberts Hotel in Oklahoma City, Oklahoma. Howard Davis, as a part time, paid employee of the State Central Committee kept and maintained the records of the "Victory Dinner" at the office of the State Central Committee. France Paris had knowledge of and approved this part time employment of Howard Davis by the State Central Committee.

X

As soon as said France Paris learned that the Civil Service Commission questioned his right and authority to serve as Chairman of the Democratic State Central Committee of Oklahoma and as a member of the State Highway Commission, he *indidated* a desire to resign as Chairman of the Democratic State Central Committee of Oklahoma, and did resign on October 18, 1943.

XI

On or about January 4, 1943, the State Headquarters of the State Democratic Central Committee of Oklahoma were closed by France Paris and later reopened under the direct charge of Mrs. L. E. Ruble, Vice-Chairman of said Democratic State Central Committee; that in the year 1943, there has not been and will not be any state or national election in which the Democratic State Central Committee is concerned; that the principal activity of the Democratic State Central Committee in Oklahoma during the year 1943 has

[fol. 16] been in connection with the "Victory Dinner" held in Oklahoma City, Oklahoma, on July 14, 1943.

Dated this 4 day of January, 1944.

The State of Oklahoma, by Randell S. Cobb, Attorney General, and Paul Pugh, Assistant Attorney General. France Paris, by Leonard H. Savage, his Attorney. United States Civil Service Commission, by L. V. Meloy, Attorney for the Commission.

EXHIBIT 1

State of Oklahoma. Department of State

F. C. Carter (Great Seal of the Secretary of State, State of Oklahoma)

To All Men to whom these presents shall come, Greeting:

I, F. C. Carter, Secretary of State, of the State of Oklahoma, do hereby certify that the following and hereto attached is a true copy of Executive Order of Appointment of France Paris, Member of Highway Commission, Filed January 15, 1943; Official Oath and Oath of Allegiance, Filed January 14, 1943; the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the City of Oklahoma City, this Twenty-Fourth day of June, A. D. 1943.

F. C. Carter, Secretary of State. Katherine Manton, Ass't Secretary of State. (Seal.)

[fol. 17] STATE OF OKLAHOMA
Executive Department.

EXECUTIVE ORDER OF APPOINTMENT

In the Name and by the Authority of the State of Oklahoma:

By virtue of the authority in me vested by the Constitution and laws of the State of Oklahoma, I, Rob't S. Kerr, the Governor of the State of Oklahoma, do hereby *appointed*

and commission France Paris, Tulsa, Oklahoma, as a Member of the Highway Commission for the regular term.

Given under my hand at the State Capitol on this the 14th day of January, 1943.

By The Governor of the State of Oklahoma, Robt. S. Kerr.

Attest: F. C. Carter, Secretary of State, by ——, Assistant Secretary of State (Seal).

4539

France Paris, Member of Highway Commission
Secretary's Memorandum

Oklahoma City, State of Oklahoma, Secretary's Office

This instrument was filed for record this 15 day of Jan. A. D. 1943, at 9 o'clock A. M.

Recorded in Commission Record No. 4 at Page 51. F. C. Carter, Secretary of State, By N. H.

Official Oath

State of Oklahoma,
County of Oklahoma, ss:

I, France Paris, Highway Commissioner, do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of [fol. 13] the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination of election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use, or travel upon any free pass or on free transportation during my term of office.

France Paris

Subscribed and sworn to before me, this 14 day of January, A. D. 1943. J. K. Henry (Seal). 3-2-1944.

OFFICERS OATH OF ALLEGIANCE

UNITED STATES OF AMERICA,
State of Oklahoma, ss:

I, France Paris, do hereby swear that I am a citizen of the United States and the State of Oklahoma and have been for three years next *preceeding* the filing of this statement; that I will support and defend the Constitution of the United States and the Constitution of the State of Oklahoma; that I am not affiliated directly or indirectly with the Communist party, the Third Communist International, or with any foreign political agency, party, organization or government, nor do I advocate revolution, teach or justify a program of sabotage, force or violence, sedition or treason, against the government of the United States or of this State, nor do I advocate directly or indirectly, teach or *justidy* by any means whatsoever, the overthrow of the Government of the United States or of this State, or change in the form of government thereof, by force or any unlawful means, and that I will take up arms in the defense [fol. 19] of the United States in time of war, or National Emergency, if necessary.

France Paris.

Subscribed and sworn to before me this 14 day of January, 1943. J. K. Henry, Notary Public. My Commission expires March 2, 1944 (Seal).

7320

Oath of Office, France Paris, Highway Commissioner.
Secretary's Memorandum.

Oklahoma City, State of Oklahoma. Secretary's office.

This instrument was filed for record this 14 day of Jan. A. D. 1943 at 5 o'clock P. M. Recorded in Record No. 1, at page 331.

F. C. Carter, Secretary of State, by N. H.

Exhibit 1-A

Excerpt from the 1939 Session Laws State of Oklahoma

Chapter 40, Article 2, Department of Highways, Section 2:

"The State Highway Commission shall consist of three (3) persons, to be appointed by the Governor of the State of Oklahoma, by and with the consent of the State Senate of the State of Oklahoma; provided that the Governor may at any time remove any member of such Highway Commission and appoint a successor, such appointment to have full force and effect, and to be submitted to the Senate for its confirmation at the first regular session of the Senate after such appointment is made (unless the Senate then be in session, if so, to be submitted to the Senate then in session), or if, in the interim, there be an extraordinary session of the Legislature convened by the Governor, then such [fol. 20] appointment shall be submitted during the term of such extraordinary session, for confirmation by the Senate. No Commissioner shall be entitled to draw any salary or perform any service until his appointment is confirmed by the Senate, if the Senate then be in session. If the Senate be not in session then, then such Commissioner may serve and draw his salary until some special or regular session convenes: and if his appointment is not confirmed within twenty (20) days he shall cease to perform such services and cease to draw a salary. Each of the Commissioners thus appointed shall, at the time of their appointment, be residents of the State of Oklahoma, and shall devote all of their time to the administration of the affairs of the Department of Highways. The Governor, at the time of making such appointment, shall designate one of the members so appointed as chairman and each of the said Commissioners shall receive an annual salary of Five Thousand Four Hundred (5,400.00) Dollars payable monthly; and in addition each shall be allowed his actual and necessary expenses incurred in the performance of official duties while away from Oklahoma City, Oklahoma."

Section 4, sub-title F:

"The Commission shall determine the number of employees necessary for the proper and effective discharge of the duties and powers hereby vested in it and shall fix and determine the salaries or wages to be paid for the serv-

ices rendered or labor performed and may change, regulate and control the same from time to time as it, by majority action, may determine; salaries and wages to be in accord with other departments of State for like character of service."

NOTE—The above law relates to the appointment and duties of the office of State Highway Commissioner, State of Oklahoma.

[fol. 21]

EXHIBIT 7

Oklahoma V . . . — Dinner

Oklahoma City, Oklahoma

(Cut of United States Flag)

Silver Glade Room

Skirvin Hotel

Seven O'clock P. M. June 14, 1943

The purchase of Bonds by everyone,
Will pay for loads of planes and guns,
To implement our fighting sons,
Win this war—it will be done!

V . . . —

Menu

Grapefruit Cocktail
Celery Branches Olives
Barbecued Half Spring Chicken
New Parsley Potatoes String Beans
Lettuce and Tomato Salad
French Dressing
Chocolate Eclair
Assorted Rolls Coffee

Program

Presiding ..... France Paris
Invocation ..... Rev. Rupert Naney
National Anthem ..... Led by C. C. Crill
Toastmaster—Governor Rob't S. Kerr
Greetings ..... Mrs. Charles W. Tillett
Songs and Music ..... Wiley and Jean
Address ..... U. S. Senator Elmer Thomas
Solo "A Wing and a Prayer" ..... C. C. Crill
Accompanied by Mrs. C. C. Crill
Greetings ..... Frank Streetman
Presentation of Distinguished Guests
Address ..... U. S. Senator Harry S. Truman

[fol. 22] God Bless America

God bless America, Land that I love
Stand beside her and guide
Her thru the night with the light
From above.

From the mountains to the prairies
To the ocean white with foam
God bless America, My home sweet home.

The Star-Spangled Banner

O say, can you see, by the dawn's early light,
What so proudly we hailed at the twilight's last gleaming?
Whose broad stripes and bright stars, through the perilous fight,
O'er the ramparts we watched, were so gallantly streaming!
And the rocket's red glare, the bombs bursting in air,
Gave proof through the night that our flag was still there.
O say, does that star-spangled banner yet wave
O'er the land of the free and the home of the brave?

V . . . —

Oklahoma Victory Dinner

Auspices

Democratic State Central Committee

France Paris, State Chairman
Mrs. E. E. Ruble, Vice-Chairman
L. T. Cook, Secretary-Treasurer

Robert S. Kerr, National Committeeman
Mrs. John G. Catlett, National Committeewoman

Executive Committee

Craig Goodpasture, Vinita, Chmn., First District; Mrs. Grace Mitchelson, Commerce, Vice-Chmn., First District; R. M. Mountcastle, Muskogee, Chmn., Second District; Mrs. Jim Parkinson, Wagoner, Vice-Chmn., Second District; C. T. (Doc) Phillips, Atoka, Chmn., Third District; Mrs. R. H. Stanley, Hugo, Vice-Chmn., Third District; Wm. (Bill) Shibley, Bristow, Chmn., Fourth District; Mrs.

[fol. 23] Edwin W. James, Weleetka, Vice-Chmn., Fourth District; Carroll J. Moody, Pauls Valley, Chmn., Fifth District; Ila Huff, Oklahoma City, Vice-Chmn., Fifth District; Carter Waid, Lawton, Chmn., Sixth District; Mrs. C. A. Davis, El Reno, Vice-Chmn., Sixth District; Lowell R. Smith, Cordell, Chmn., Seventh District; Mrs. Weldon Ferris, Altus, Vice-Chmn., Seventh District; Carl Ticer, Fairview, Chmn., Eighth District; Mrs. O. H. Cafky, Forgan, Vice-Chmn., Eighth District.

V . . . —

EXHIBIT 8-A

Oklahoma City, Oklahoma.

Honorable Robert S. Kerr, Governor, Honorary Chairman of State Committee, War Savings Staff, Oklahoma City, Oklahoma.

DEAR GOVERNOR:

This is my pledge to buy $—— in "War Stamps or Bonds" during June, which is equivalent to, or in excess of, my purchase of tickets to the Oklahoma Victory Dinner at the Silver Glade Room in the Skirvin Hotel building on June 14th.

Respectfully, —— ——.

EXHIBIT 8-B

Oklahoma City, Oklahoma.

Honorable Robert S. Kerr, Governor, Honorary Chairman of State Committee, War Savings Staff, Oklahoma City, Oklahoma.

DEAR GOVERNOR:

This is my pledge to buy $—— in war bonds (any series) during the remainder of 1943, in connection with my purchase of tickets to the Oklahoma Victory Dinner at the Silver Glade Room in the Skirvin Hotel on June 14, 1943.

Respectfully, —— ——.

Date —— ——.

[fol. 24] EXHIBIT 9

Mr. Mahlon Walters, Washington, D. C.

DEAR MR. WALTERS:

In response to your inquiry of this date, this is to advise you that the Honorable France Paris is Chairman of the Democratic State Committee of Oklahoma. He is also a member of the Oklahoma Highway Commission, having been appointed by me in January of this year. This is to further advise you that he presided at the Victory Dinner held in Oklahoma City on the evening of June 14, 1943.

Trusting that this is the information desired by you, and with very best wishes, I am

Sincerely yours, Robt. S. Kerr.

RSK:RT.

BEFORE UNITED STATES CIVIL SERVICE COMMISSION

REPORT AND ORDER

Headnote: Found, that the respondent France Paris violated Section 12(a) of the Hatch Political Activities Act, as set forth in the following Report and Order; and that the violation was such as to warrant removal from employment.

Ordered, that the respondents be informed of the Commission's determination aforesaid.

At a Session of the United States Civil Service Commission, held at its office in Washington, D. C., on this the 7th day of September, 1944, there being present President Mitchell, Commissioner McMillin, Commissioner Flemming, and there being before the Commission the record of the proceedings designated as above, and further captioned

Before James W. Irwin, chief Hearing Examiner—with appearances shown—

Lawrence V. Meloy, Esq., and Mahlon L. Walters, Esq., Attorneys for the Government: Honorable Randall S. Cobb, Attorney General, Hon. James W. Bounds, Assistant Attorney General, and Hon. Paul Pugh, Assistant Attorney [fol. 25] General, for the State of Oklahoma; Leonard H. Savage, Esq., Attorney for the respondent, France Paris;

The Commission, being fully advised in the premises, by majority vote adopts the following Report and Order.

I. Introductory

A. Pleadings and Procedure

A Letter of Charges was filed on October 12, 1943, wherein violations of Section 12(a) of the Hatch Political Activities Act (U. S. C. A., Title 18, Sec. 61-L(a); 54 Stat. 767) were alleged against the respondent France Paris. The essential allegations may be summarized as follows:

That on or about January 14, 1943, the respondent was appointed and assumed office as, a member of the Highway Commission of the State of Oklahoma, a position which he still retains.

That by reason thereof, the respondent's principal employment has been, at all times since the date aforesaid, "in connection with an activity financed in whole or in part by loans and grants made by the United States and by a Federal Agency thereof."

That on the aforesaid date, the respondent was Chairman of the State Central Committee of the Democratic Party of Oklahoma, a political party office. That notwithstanding assumption of his duties on the Highway Commission he continued, and at the time of filing the Letter of Charges still remained, Chairman of the Central Committee, and exercised the functions of that office.

That since January 14, 1943, the respondent, by reason of his activities as Chairman of the said Committee, has engaged in political management of the Democratic Party.

That, in particular, he took an active part in political management in that he assisted in raising funds for the Democratic Party by the sale of tickets for, and the giving of, a banquet in Oklahoma City on June 14, 1943.

Issue on the case was joined by Mr. Paris and by the corespondent, the State of *the State of* Oklahoma, by separate Answers, parallel in terms. Each "admits all of the [fol. 26] material allegations of fact charged in said Letter of Charges," but "denies the conclusion of law." Each of the Answers expressly stated that the answering respondent, "hereby waives a hearing on the allegations of fact." In view of the respondent's categorical admission of all the material facts alleged in the Letter of Charges, the trial of the case appeared to be reduced largely to determination of issues of law. It was concluded that the case could be disposed of upon the pleadings—with a supple-

mentary stipulation designed to elucidate certain details of fact. This was, it may be *remared*, a departure from previous practice; as in all other cases under the said Section 12(a) of the Act, hearings have been conducted before the Commission's hearing examiner.

According to our regular practice, a Preliminary Report was made to the Commission by our Chief Hearing Examiner, after a study of the record, setting forth his tentative recommendations, and copies were served on the attorneys for the respondents and for the Government. Thereafter, briefs were filed by the attorneys. Application for oral argument was made by the respondents, and was granted. It was held before the Commission sitting in Washington, D. C., on June 20, 1944; the case is now before us upon the complete record and argument.

B. The Constitutional Question

The Answers to which we have alluded contained a challenge to constitutionality of "the provisions of Sections 12(a) and 12(b) on the Hatch Act"; and several pages of the respondent's joint brief are devoted to that topic. This issue has been raised in numerous actions before the Commission; but expression of an opinion thereof would be beyond the scope of our functions. Our duty is to administer that portion of the Act committed by Congress to our jurisdiction. Only the courts can say that the Act is, or is not, constitutional. We may remark, however, that in two cases judicial review of our determinations has been sought on the ground, inter alia, of the alleged unconstitutionality of application of the Act to employees of State and local agencies; and in both instances the courts have upheld the constitutionality of the provisions referred to, and have [fol. 27] sustained the decisions of the Commission. See Stewart v. U. S. Civil Service Commission, 45 Fed. Sup. 697; Neistein v. Mitchell, 52 Fed. Sup. 531. The latter decision also appears in Pike and Fischer Adm. Law, 41-b.212-8, and was quoted in Law Week of December 7, 1943 (12 LW 2308).

C. Jurisdiction

Our Reports and orders regularly make a finding as to jurisdiction. We shall do so in this instance, although jurisdiction is not questioned. The record discloses that the

State Highway Commission, of which the respondent Paris was a member, has general supervision and control of all work of the State Department of Highways. It also shows that activities of that Department *has* jointly financed by the State and Federal Government. These facts are clearly sufficient, under jurisdictional precedents heretofore established by the Commission, to sustain its jurisdiction. See In the Matter of Slaymaker, et al., Docket No. 31, and In the Matter of Fleming, et al., Docket No. 2 (Pike and Fischer Adm. Law, 41b.1-1 and 3).

II. The Issue of Violation

A. Comments on the Two Charges

As has already been stated, the offense charged against State Highway Commissioner Paris is that of taking an active part in campaign management. The specifications are:

(1) That he served as Chairman of the State Democratic Central Committee; and

(2) That he participated in arranging and conducting a function designated as the "Victory Dinner" for the purpose of raising funds for the Democratic Party.

That he did these things is admitted in the Answers and in the Stipulation of Facts; though the legal conclusions drawn in the Letter of Charges are not, as we hav seen, admitted.

We do not consider that Congress left it an open question whether the admitted and stipulated facts constitute a violation of the Act. Section 15 ays:

[fol. 28] The provisions of this Act which prohibit • • • taking an active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are • • • prohibited on the part of employees in the classified civil service of the United States by • • • civil service rules prohibiting such employees from taking any active part in political management or in political campaigns.

Civil Service Rule I, Section 1, prohibits persons in the executive civil service from "taking an active part in

political management." This particular language was incorporated into the civil service rules relating to political activity, in a revision promulgated by President Theodore Roosevelt on March 20, 1903 (effective April 15). Under the Commission's long-standing interpretation that rule is violated by service on a political committee. This appears in the Commission's Form 1236 (an exposition of regulations concerning political activities), paragraph 1, 1910 Edition, and in sundry subsequent editions through that of 1944 (paragraph 17). The ruling seems to us quite sound. But even if we are inclined to re-examine the question, it would be beyond our authority to do so. By Section 15 of the Hatch Act, Congress has adopted that rule. It is embodied in the law. The Commission is as little able to change that, as it is to change any other enactment of Congress.

Form 1236 of January, 1944, will be found in the envelope with the briefs.

The foregoing findings are in line with those in our Report and Order entitled, In the Matter of Caddell, et al., Docket No. 159, Pike and Fischer Adm. Law, Decision Notes Nos. 562 and 563. In that case we found that the respondent had violated the Act by serving (while subject to the Act by virtue of employment in the Lowell Housing Authority), as a member of the Republican Committee in his ward of the city of Lowell, Massachusetts. For that violation, joined with the additional violation of having been a candidate for re-election to the City Council, we found Mr. Caddell's removal from employment by the Housing Authority to have been warranted.

[fol. 29] The primary charge against the respondent clearly is that he served as Chairman of the Oklahoma Democratic State Central Committee, while a member of the State Highway Commission. In view of the principles hereinbefore stated, we find—and we believe we could not do otherwise—that this constituted taking an active part in political management in violation of Section 12(a) of the Act.

There is also the other charge, as alleged by the Letter of Charges (and admitted by the Answer), that:

> • • • the said France Paris • • • assisted in the raising of funds on behalf of said party by the sale of tickets for, and the giving of a banquet known as the Oklahoma Victory Dinner, held in Oklahoma City on June 14, 1943.

The Stipulation of facts adds the following items of evidence:

The details of the "Victory Dinner" were handled by a committee * * *. France Paris was an ex officio member of this committee. He advised with the Governor and the committee concerning the dinner but was not (otherwise) active in planning and arranging it. He called the meeting to order and introduced the Toastmaster. The "Victory Dinner" was designed to provide the National Democratic Committee and the State Democratic Committee with funds to discharge a deficit * * * and to provide the said party with funds for its further and contemplated political activities, * * * (It) netted the Democratic Party * * * a sum in the approximate amount of $30,000.

The Stipulation also recited that another purpose of the dinner was "selling War Bonds," in which (according to the stipulation) it appears that the function was a monumental success.

We find that the said dinner was a political function, though not exclusively political. Therefore these questions might be raised:

Was the arrangement committee upon which Mr. Paris [fol. 30] served a political committee within the purview of the Commission's rulings incorporated into the Hatch Act by Congress under Section 15?

Was the respondent's membership on the arrangement committee—together with his described participation in the program of the dinner—in and of itself a violation of the Act?

We consider it unnecessary to pass upon these matters as isolated incidents—since they were not in that category. It is stipulated that his membership on the committee was ex officio (that is, it was incident to his chairmanship of the State Central Committee). It seems evident that the part he took on the program of the dinner was also ex officio. We think those activities merge into the primary activity of

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* We insert the word "otherwise" as having been necessarily within the contemplation of the attorneys when they entered into the stipulation quoted.

service as Chairman of the Central Committee. Therefore, we do not find them to constitute a separate violation of the Act.

B. Matters in Which We Agree With Respondents

The brief and argument of the attorneys for the Government stressed as an instance of political activity by the respondent Paris, the sale of tickets—at prices varying with the purchaser's official position—to the personnel of the Highway Department. We find that the record does not establish the respondent's knowledge of responsibility concerning this detail of the sale of tickets.

The attorneys for the Government, in brief and argument, emphasized the stipulated fact that Howard Davis, an employee of the Highway Department, also worked as a hired employee of the Central Committee; that this dual employment was known to and approved by Mr. Paris; and that Mr. Davis kept accounts for the Victory Dinner. It appears from the stipulation that this dual employment long antedated Mr. Paris' connection with the Highway Department; and that Mr. Davis' work for the committee was limited to times outside the hours of employment in the Highway Department. We deem all this to be immaterial to the issues of the case. It was not a violation of the Hatch Act for Mr. Paris to know of and approve Mr. Davis having augmented his earnings by working as a hired employee of the [fol. 31] committee; nor was the respondent chargeable with knowledge of what Mr. Davis may have learned as an employee of the committee.

III. Matters Urged in Mitigation

Certain matters urged by the respondents primarily to bar to this action, were also relied upon *the* mitigation. That is, the respondents contended that if the Commission should not find them sufficient to justify a finding that the Act was not violated, they should at least prevent a finding that removal is warranted. We shall now consider the latter aspect of the case.

A. Resignation from the Committee

The Stipulation of Facts recites the following:

Since said France Paris learned that the Civil Service Commission questioned his right and authority to serve as

Chairman of the Democratic State Central Committee of Oklahoma and as a member of the State Highway Commission, he indicated a desire to resign as Chairman of the Democratic State Central Committee of Oklahoma, and did resign on October 18, 1943.

In addition to this, respondent counsel asserted in oral argument before the Commission that Mr. Paris contemplated resignation from the Central Committee at the time he was appointed to the Highway Commission, and considered whether there was incompatibility in his occupying the two positions; but that he received advice that there was no such incompatibility. It was further stated that Mr. Paris is not an attorney, and that the advisers consulted were learned in the law, and that Mr. Paris relied upon their opinion.

It was further said by respondent counsel in oral argument, that Mr. Paris was solicited by others to remain Chairman of the State Democratic Central Committee because a new Democratic administration had recently assumed executive control of the State, and it was believed that his long experience as Chairman of the State Committee would make his continued service valuable under those conditions.

[fol. 32] A(1) Incidental Comment on Commission Practice

In this connection, comment should perhaps be made upon the effect of statements in argument by counsel concerning facts not appearing in the record. We endeavor to hold our proceedings under Section 12(a) on a strict quasi-judicial plane. It is our practice to adhere substantially to the procedure and rules of evidence applied in civil non-jury actions in the Federal district courts. Our determination is such proceedings are, therefore, made exclusively upon the record. However, counsel arguing this case indicated their willingness to submit proof of these factual statements made in argument, if desired by the Commission. Under the circumstances of the case, we would have offered to provide a suitable opportunity to amplify the record had we deemed that a useful purpose would have been served. However, it did not appear that the testimony proposed would materially affect our decision.

B. Asserted Political Quiescence

The following is quoted from the Stipulation of Facts:

On or about January 4, 1943, the State Headquarters of the State Democratic Central Committee of Oklahoma were closed by France Paris and later reopened under the direct charge of Mrs. L. E. Ruble, Vice-Chairman of said Democratic State Central Committee; that in the year 1943, there has not been and will not be any state or national election in which the Democratic State Central Committee is concerned; that the principal activity of the Democratic State Central Committee in Oklahoma during the year 1943 has been in connection with the "Victory Dinner" held in Oklahoma City, Oklahoma, on July 14, 1943.

This was, undoubtedly, pertinent evidence. The violation would have been more aggravated had the respondent Paris engaged in a period of varied and fervid political labor while serving as Highway Commissioner. However, we shall offer further comment upon this.

[fol. 33] C. "Not a 'Pernicious' Violation

The respondent point to the title of the Hatch Act, the legislation being captioned

"An Act to prevent pernicious political activities, approved—July 19, 1940."

They argue forcefully that there was nothing in Mr. Paris' activities that can be characterized as "pernicious." But we are sure that the penalty of the Hatch Act was not intended to be applied only against those whose activities are malum in se. "Pernicious" is a word with a wide range of meaning. Probably, within the legislative contemplation, anything that violates a statute is "pernicious."

Furthermore, a statute can not be interpreted by the language of its title. Under many State constitutions the wording of statutory titles is important, but this is less true of Federal enactments. We quote from Horack's Sutherland's Statutory Construction, Volume I, Page 283:

"Originally in England bills were not given titles. Even when used titles were not considered part of an act. . . . Eventually, the draftsmen of State constitutions inserted provisions in their documents, the effect of which was to

require titles on all statutes. The Federal Constitution does not impose any limitations on the use of titles.

A title need not fully express what is contained in the body of the act. It is not essential that the best, or even a highly accurate caption be affixed, provided that the legislative purpose is suggested in a general way. Some courts have gone so far as to rule that a title is sufficient if its language in any sense or meaning covers the provisions of the act, even though the meaning given to the words is neither an obvious nor common one.

We quote also from a Supreme Court Decision:

While the title of a statute should not be entirely ignored in determining the legislative intent, it can not be used to extend or restrain any positive provisions contained in the body of the act, and is of little weight even [fol. 34] when the meaning of such provisions is doubtful. (Goodlet vs. Louisville Railroad, 122 U. S. 391, 408-9.*)

IV. The Issue of Removal

We have stated our finding that the *respondence* France Paris violated Section 12(a) of the Hatch Act. It remains to make a finding whether the violation warrants removel from employment as a member of the Highway Commission. Upon this, it is necessary to consider the several matters relied upon by respondents in mitigation.

A. Concerning the Resignation

The facts, previously stated, regarding the respondent's resignation from the State Central Committee merit attention. In the first place, the date of the resignation marks the end of the violation of the Act, and the length of time a violation continues is one factor bearing upon its seriousness.

We have seen that it has been said that Mr. Paris considered resigning from the Central Committee when first appointed to the Highway Commission, but was advised

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*It may be remarked that the statute under consideration was one of the State of Tennessee which (like Oklahoma, the respondent's Paris' State) differs from the Federal Government in that it has a constitutional requirement that the subject of a statute shall be expressed in the title.

against doing so; and he did resign October 18, 1943 (directly after notice of the filing of the Letter of Charges in this case).

We do not question the good faith of the advice alluded to. We do doubt that it was based upon mature consideration of the Act. It seems to us that one reading the Act, particularly if he observed Section 15 and took note of (or made inquiry about) prior rulings, would have realized most readily that the Act does not permit a person within its terms to hold a political position such as that which was occupied by Mr. Paris.

While recognizing the mitigating purport of the evidence concerning resignation, we do not feel that it can control our determination. It may be said that we have another illustration of an expression recently current—"Too little, [fol. 35] and too late," The contemplation of resignation without action was "too little"; when the resignation occurred it was "too late" to forestall conspicuous violation of the Act.

B. Concerning Degree of Respondent's Activity

We have observed what has been said concerning the relative inactivity in Oklahoma politics during the period that Mr. Paris coincidently Highway Commissioner and Chairman of the Central Committee. Neverthless, we consider that the head of the State organization of a major political party holds an important place in political management, even in so-called "off-years" politically. By illustration, it may be said that he is the political counterpart of a general who heads an army. The commander is in a position of consequence, whether *he* forces are "on the march", or are *bevouaced* for the year. We, of course, accept the stipulation that "the principal activity" of the State Committee in 1943 was the "Victory Dinner." However, this does not mean that the general responsibilities of the position of Chairman of the State Central Committee were not — be considered important. That they were consequential is substantiated, we think, by the argument of respondent counsel (to which we have alluded in III-A, ante) that it was deemed inexpedient for a person of Mr. Paris' experience to surrender the leadership of the Central Committee in view of the fact that a new State administration had assumed office.

V. Conclusion, and Order

The respondents' plea in mitigation is basically this: That Mr. Paris did not intend to violate the Act; and that his violation (if any) was not aggravated.

We do not take the position that the respondent had an actual, premeditated design to violate the Hatch Act. But if it be granted that the violation was not premeditated, that can not be accepted as constituting, of itself, a bar to the imposition of the penalty. If so, it might never be possible to demonstrate that a penalty should be imposed in any case. In every proceeding under the Hatch Act that has been before us, the respondent has disclaimed any idea that what he did violated the Act.

[fol. 36] It seems to us that a person who has three times been chosen to head a major political party organization in a State must be presumed to be informed on the terms of the Hatch Act. For him to have concluded that the Act does not preclude a person subject to it from occupying the top position in a State political organization is a conclusion which, it seems to us, can only be explained on the basis of inattention, or of "the wish being father to the thought."

In oral argument, respondent counsel dwelt upon Mr. Paris' fine reputation and the high regard in which he is held in Oklahoma. They deplored the placing of a blemish upon his record by an adverse judgment in this case. They stated, in effect, that in Oklahoma removal from office is regarded as importing some unusual and "awful" misdeed. We, nevertheless, shall trust that our findings in this case will not be taken to imply more than they say.

Rather than Mr. Paris' situation being unusual, we would not be surprised if it were demonstrated that the placing of outstanding political figures in high position in highway departments has been a very familiar practice in the past in many States. Knowledge of this may, indeed, have been a contributing factor to what we deem to have been Mr. Paris' insufficient attention to the requirements of the Hatch Act.

In our Report and Order entitled, In the Matter of McEachren, et al., Docket No. 117 (a case in which we found the removal of three highway commissioners of another State to be warranted), we discussed at some length, the topic of political activities in highway departments. In

that document, we quoted from an enlightening exposition of the subject found in V. O. Key Jr.'s, The Administration of Federal Grants to States, published under auspices of the Social Science Research Council three years before enactment of Section 12. (For reports on the case, see Pike and Fischer Adm. Law, 41b.1-8; Law Week, 12-2418.)

One passage concerning Hatch Act violations in highway departments, appearing in the McEachren Report and Order, is as follows:

[fol. 37] Mr. Sid Smyth, Director of Personnel and Purchases, with twenty-three years' official experience in the Highway Department, testified that such political activities as existed in that department prevail "in all State institutions", not only in Arizona, but, he thought "he would be safe in saying, throughout the United States." Generalization tends to exaggeration. Yet, so far as Mr. Smyth's sweeping statement mitigates in favor of the respondents by showing that what they are charged with is not something unique, we accept it as having basis in fact.

But the testimony has another edge. The more prevalent abuses are, the more need for cure. Congress doubtless believed, as does Mr. Smyth, that conditions which it sought to correct were widespread, otherwise Section 12(a) would not have been enacted.

It it were required, before determining that removal from employment for Hatch Act violations is warranted, to show evil intent, or premeditated purpose to defy or violate the law, or that what the respondent did, (or the State Government's placing a political leader on the Highway Commission) was unique or unusual, or that any stigma resulted, then we should not find that Mr. Paris' removal is warranted. It might be said that the respondent—however patriotic his motives may have been—simply failed to realize that the Hatch Act required him to make the choice between serving the public as a Whole in official employment, and serving a party in partisan employment.

But we can not find that Mr. Paris' violation of the Act was minor. Congress has said (as pointed out in our discussion of Section 15) that a person subject to the Hatch Act shall not serve on a political committee. It is not for this Commission to say that this particular type of offense is inconsequential; and an outstanding infringement of that provision is disclosed in this case.

As was stated in oral argument by counsel for the Government, the typical State political organization is a ramified structure. At its base are perhaps thousands of party officials of precincts and wards. Above them are the county organizations. Then comes the State organizations. At the pinnacle is the State Chairman. If a person subject to [fol. 38] the Hatch Act can serve as State Chairman with impunity, how could this Commission consistently impose a penalty for service anywhere down the line?

We find that the service of the respondent France Paris as Chairman of the Oklahoma State Democratic Central Committee from January 11, 1943 to October 18, 1943, while a member of the Oklahoma State Highway Commission, with the incidental political activities disclosed in this Report and Order, constitutes a violation of Section 12(a) of the Hatch Political Activities Act which warrants removal from the office of Highway Commissioner.

It Is Ordered, that notice of the aforesaid determinations be given to the respondent France Paris and to the State of Oklahoma; and that this Report and Order be in full force and effect from this date, *excep* that the statutory period during which a withholding order shall not issue, shall run from and after completion of the aforesaid notice.

By the Commission: L. A. Moyer, Executive Director and Chief Examiner.

President Mitchell, dissenting:

I cannot agree with this conclusion. The law provides that an employee shall not take any "active" part in political management or in a political campaign. In this case, during the period with which we are concerned, there was no political campaign going on; and there is no evidence that Mr. Paris was active in political management, in the sense in which the term would ordinarily be used. On the contrary, his continuance in the office of Chairman of the State Committee was entirely negative. He had been *elcted* some years before and had failed to resign his chairmanship when he became a member of the State Highway Commission. Apparently he had been advised by legal authority that it wasn't necessary for him to resign a position to which he had previously been elected. While that was a mistake, in this case it was one which could easily be made.

In addition, in order that he might be relieved from any details that might arise as a result of a past political cam- [fol. 39] paign he turned the State office over to the Vice-Chairman. Shortly thereafter the office was closed entirely, as is customary between elections.

In our recent Arrington case, Docket No. 120 (Pike and Fischer Adm. Law, 31 d.3-1), the respondent had been politically active in a mild degree; but the activity had not been "pernicious." His removal was found not to be warranted. In many other cases, we have found that although the respondent had committed some slight violation of the statute, removal was not warranted.

The Caddell case is cited in the instant Report and Order. Without elaborating upon the Caddel case, it may be stated that it is not on a par with the Paris case. Mr. Caddell held the political office of City Committeeman, and also was a candidate for City councilman in a party primary and later in the general election,—all while employed in connection with the spending of Federal money.

By failing to resign the chairmanship Mr. Paris violated one of the Civil Service regulations pertaining to political activity which were included in the Hatch Act. However, the violation was not one which "warrants the removal of the officer."

Date Received September 7, 1944. By H. Cunningham (Docket Clerk).

IN UNITED STATES DISTRICT COURT

ANSWER—Filed November 6, 1944

Respondent, United States Civil Service Commission, by Whit Y. Mauzy, United States Attorney for the Northern District of Oklahoma, answering the petition herein, alleges as *folllws*:

1. In compliance with Section 12(c) of the Act of July 19, 1940 (54 Stat. 768; Title 18 U. S. C. Sec. 61; (c)), there has been filed with the Clerk of this Court on or about October 13, 1944, a certified transcript of the record upon which the order of the Civil Service Commission complained of herein was made, which said transcript is hereby incorporated in this answer by reference and made a part hereof. [fol. 40] Said transcript is hereinafter in this answer referred to as the "record."

2. Answering paragraphs 1, 2, and 3 of said petition, reference is made to the record which constitutes a full and true statement of the matters referred to in said paragraphs, and except as shown by said record, respondent denies each and every allegation contained in the said paragraphs.

3. Answering so much of paragraph 4 of said petition as pertains to the administrative hearing herein or matters prior or subsequent thereto, reference is made to the record constitutes a full and true statement of all such matters, and except as shown by said record, respondent denies each and every such pertinent allegation contained in said paragraph.

4. Answering paragraph 5 of said petition, respondent alleges that the allegations of said paragraph are conclusions of law which do not require an Answer, but to the extent that the same may be treated as allegations of fact, denies each and every allegation contained in said paragraph.

For a First Separate and Distinct Affirmative Defense, Respondent Alleges:

5. The determination and order complained of are in accordance with law and should be affirmed.

For a Second Separate and Distinct Affirmative Defense, Respondent Alleges:

6. Sections 12a, 12b, 12c, and 15 of the Act of July 19, 1940 (54 Stat. 767, 768, 769, 711; title 18 U. S. C. A. Sec. 61L (a), (b), and (c), and 61o) are constitutional.

Wherefore, respondent prays for judgment in accordance with Section 12(c) of the said Act of July 19, 1940 affirming the determination and order complained of herein, and for such other relief as may be appropriate.

Whit Y. Mauzy, United States Attorney, Tulsa 3, Oklahoma.

[fol. 41] Copy mailed to Honorable Randall S. Cobb, Attorney General of the State of Oklahoma, this 6th day of November, 1944.

WHIT Y. MAUZY, United States Attorney.

[File endorsement omitted]

In United States District Court

Proceedings Had on June 18, 1945, When Findings of Fact and Conclusions of Law Were Filed and Judgment Rendered Thereon.

Be it remembered, that on the 18th day of June, A. D. 1945, at 10 A. M., this above-styled and numbered cause came on regularly for decision in the above-named Court, sitting at Tulsa, Oklahoma, the Honorable F. E. Kennamer, United States District Judge, presiding.

The appearances were as follows: The Honorable Randell S. Cobb, the Attorney General for the State of Oklahoma, and the Honorable James W. Bounds, as Assistant Attorney General for the State of Oklahoma, appeared for the plaintiff. The Honorable Whit Y. Mauzy, United States Attorney for the Northern District of the State of Oklahoma, appeared for the defendant.

And thereupon the following proceedings were had, to-wit:

The Court: In the case of the State of Oklahoma, petitioner, versus United States Civil Service Commission, this was an action instituted by the State of Oklahoma to vacate and set aside an order of the Civil Service Commission, finding that France Paris, who was a member of the State Highway Commission, had violated what is known commonly as the Hatch Act prohibiting pernicious activity of public officials engaged in political matters.

I have had *lot* of cases to decide in my career as a judge in the State Supreme Court of Oklahoma, and as a judge in the Federal District Court, and I do not believe, Gentle-[fol. 42] men, I have ever devoted as much time in investigation of a case as I have this one. The reason for my endeavor in trying to reach a just and a lawful conclusion was that I regarded the case as of some importance both to the State of Oklahoma, and to the Civil Service Commission.

I want to make this observation. The case was well presented by both sides, by able counsel, and in the oral argument they gave the court a great deal of assistance, answering the inquiries I made of counsel as to the power of the court and the jurisdiction of the Court in a case of this kind, reviewing an order of an administrative body such as the Civil Service Commission. At the conclusion of the oral argument presented in this court I almost pre-judged

the case. After the oral argument I was firmly of the opinion that the State should prevail in the action. I thought the order of the Commission was entirely too drastic, in view of the circumstances and the admitted facts in the case. In fact, there was no dispute about the facts. All the material facts had been stipulated by counsel.

It appears from the record that Mr. Paris, sometime prior to 1942, had been by his party selected as Chairman of the Democratic Central Committee of the State of Oklahoma, and was acting in behalf of the party in the election of 1942. He was a very ardent supporter of Governor Kerr, and I will say that with commendable diligence he did some valuable work for his party and his choice for Governor. This is not in the record, but the Court takes judicial notice of that part of it. And after Governor Kerr's inauguration, and in January, 1943, he selected Mr. Paris as a member of the State Highway Commission of the State of Oklahoma; and as far as the record in this case is concerned, there is no complaint—none whatever, that Mr. Paris has not been a faithful and a diligent member of the State Highway Commission. But for some reason undisclosed, as far as the record is concerned, the Civil Service Commission examiner made an investigation, and having ascertained that Mr. Paris, as a member of the State Highway Commission, was also still holding the title of Chairman of the State Democratic Central Committee, made no complaint that he, during the year 1943, was perniciously active in political matters. The only thing was that they had [fol. 43] a Jackson Day victory dinner to raise some funds to pay off some, I would say, campaign deficits accruing in 1942, both for the National party and the State Democratic Party. And it appears from the record that all Mr. Paris had to do with that, that he called it to order—the meeting, and turned the meeting over to Governor Kerr, who was really the sponsor of the meeting. Which was all very proper for a political party to do, to have a meeting for the purpose of satisfying deficits in their past campaigns. Nobody could complain that there was anything wrong about that.

However, the Civil Service Commission had information, through this examiner, that this title to the office Mr. Paris held, as Democratic State Chairman, he still held, and made an investigation, wrote Mr. Paris a letter advising him that the holding of the office of State Highway Commissioner—

of course the Federal Government grants large sums of Federal funds to the different states—all the states, for road construction and road purposes—and holding the title of Chairman of the Democratic State Central Committee, and being a member of the State Highway Commission, was a violation of the Hatch Act—against the activities of people charged—or parties charged with having disposition or spending of public Federal funds, of grants from the Federal Government, which was a violation of the law.

The record shows that Mr. Paris had consulted—that is, is was admitted in the oral argument, that Mr. Paris had consulted the Governor, who was a lawyer—and Mr. Paris not a lawyer; and he had also consulted the District Attorney for the Western District of Oklahoma. Now, this was admitted in the oral argument. And they both advised him it was no violation of the law, as far as they could understand, in holding the title to the office of Democratic State Chairman of the Central Committee, and being a member of the State Highway Commission. However, Mr. Paris sought the advice of the Commission, they held that it was a violation of the law; and within six days after such notice, he resigned as Chairman of the Democratic State Central Committee.

I inquired of counsel representing the Government, the [fol. 44] Civil Service Commission, in view of the fact that Mr. Paris had resigned his chairmanship of the State Central Committee, what further interest the Government had in the matter. Well, with a great deal of logic, of course, they said it had been the holding of the Civil Service Commission, I believe since the year 1910, that the holding of a title of a precinct committeeman constituted a violation of the Hatch Act on the part of the Federal employees; and they had religiously adhered to that holding, and therefore, to be consistent, they would have to hold that Mr. Paris had violated the law, and they would have to impose a penalty upon him.

Now, the Statute provides that the penalty—they requested the State to remove Mr. Paris as a member of the State Highway Commission, or whatever office may be involved, and upon refusal to remove him, the Government will withhold, I believe it is double the amount of his annual salary for two years. Is that right, Mr. Cobb—two years?

Mr. Bounds: Double the amount for one year, if Your Honor please.

The Court: Of his annual salary for two years, as I remember the penalty. And they merely certify to the State authorities, the Civil Service Commission does, their ruling.

In this case the opinion of the Civil Service Commission was a divided opinion. The presiding Commissioner, Mr. Mitchell, dissented from the majority—the other two members of the Commission, in that they were required—that Mr. Paris resign as State Highway Commissioner, or impose upon the State the penalty of withholding twice the amount of the salary for two years. Mr. Mitchell, however, did say there had been a violation of the Act, but that he thought that the order requiring this removal from office was—and withholding of the funds, for two years—in effect he stated it was too severe.

I have pointed out—I am filing in the case my findings of fact and conclusions of law, that I thoroughly agree with the dissenting opinion; but I find upon investigation of the statute, especially section 12 and section 15, the matter of penalty imposed, where there has been a violation of the law, [fol. 45] is within the discretion of the Commission, and that the Court is without any power to revise it or reverse it. In fact, Section 12 of the Act provides that if the Commission has proceeded according to law, and there has been a violation of the Act, the Court has no alternative except to affirm the order of the Commission. It is just like, you might state, the appellate courts in the Federal judiciary—I happen to have had some experience along that line. We frequently, in reviewing the judgments of trial courts in criminal cases, would reach the conclusion that the trial court's penalty was entirely too severe, in view of the circumstances in the case. But the appellate court is powerless to reverse or revise the punishment, that being a matter of discretion of the trial court.

So, Gentlemen, I have filed formal written findings of fact and conclusions of law; and with some—very much reluctance, I will say, that I have reached the conclusion I was powerless to do anything other, under the statute, *thct* affirm the order of the Commission.

It may be like once Abraham Lincoln stated: that the best way to get a bad law repealed, or changed—and I think Abraham Lincoln was the greatest statesman the

world ever produced (that is not a proper subject of my decision, but I don't mind telling anybody that I think that history finally will record Abraham Lincoln as the greatest humanitarian, a man that possessed a human heart as full of the milk of human kindness as the ocean is full of water) he said the best way to get a bad law—and I don't say this is particularly a bad law, but I do say this: I think the purpose of the law is great and good; but I believe any citizen, I don't care how humble, how low, or how high he may be, I believe when he is hailed before one of these administrative bodies or commissions and they enter an order that affects his rights as a citizen and as to his right to hold public office, or exercise any other civil right, I believe that the court ought not to be circumscribed and limited in reviewing that order as to any important phases of the order made, whether it be the penalty, or otherwise; and that it is denying the citizen of a right that he ought to have, to have a fair, impartial, judicial review of the order. [fol. 46] And if the Court finds that he has any substantial right that has been invaded, he ought to have the power to correct and rectify it. And, if I had the power in this case, as I construe the statute, I would revise this order. But, Mr. Cobb, I have reached the conclusion I don't have that power.

And I have directed the Clerk in the findings of fact and conclusions of law—and you had better get this, Mr. Clerk—to enter a judgment upon the findings of fact and conclusions of law filed herein, denying the relief that the complainant prayed for in his petition, and affirming the order of the Civil Service Commission.

Mr. Cobb: If the Court please, as I understand it, it is not necessary for us to except to the order.

The Court: No. But I will let the record show that you do except to the findings and conclusions. I don't think you have any objections to the findings, but you may—because they are all stipulated facts—but I am assuming you will except to the conclusion of law reached—the conclusions of law.

Mr. Cobb: Yes, sir.

The Court: And the Clerk may show that you took exceptions in open court.

Mr. Cobb: All right, thank you. I think that it is—I appreciate the views of the Court. I think, though, that

this is a matter of such public importance that probably the State of Oklahoma should take an appeal to the appellate court.

The Court: I would be very much pleased if you would.

Mr. Cobb: And in due time we will file our notice of appeal.

The Court: I wish the Circuit Court of Appeals would find some way to reach a different conclusion.

Mr. Cobb: In order that there might not be any misunderstanding about the amount of the penalty, that statute provides that if Paris is not removed that then the Federal agency, the Commission, shall make, and certify to the [fol. 47] appropriate Federal agency, an order requiring it to withhold from its loans or grants to any state or local agency to which such notation was given an amount equal to two years compensation at the rate such officer or employe was receiving at the time of such violation.

The Court: I see—it is two years—it is not double the amount of salary.

Mr. Cobb: Two years' pay, that's right.

The Court: I see. Thank you.

Mr. Mauzy: If Your Honor please, I presume that you desire that a written journal entry of judgment be filed.

The Court: Well, if you think so. I have directed the Clerk, just like the—I have discussed that some—I have directed the Clerk to enter judgment on the findings and conclusions of law, denying the relief to complainant, and affirming the order of the Commission. Now, if you think it is necessary to have a little formal written journal entry in accordance with that, you may prepare it.

Mr. Mauzy: I will discuss that with the Attorney General, Mr. Cobb.

The Court: Whatever you gentlemen decide will be all right.

Mr. Mauzy: I will say to Your Honor, this has been a hard case——

The Court: I want to make this further statement: When this case arose Mr. Covington was Judge Savage's law clerk. And that is what law clerks are for, is to help the Judge. And, in the investigation of the authorities and the law—I am not indicating that this is his same opinion—but he rendered valuable service to the Court in running down the authorities.

Mr. Mauzy: Let me say to Your Honor, this has been a hard case for me to be connected with, although I was just a "water boy" in it.

[fol. 48] Reporter's certificate to foregoing transcript omitted in printing.

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed June 18, 1945

After the trial and argument and study of the briefs submitted as well as personal research, the Court makes and renders the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This is an action brought to review an order of the United States Civil Service Commission dated September 7, 1944, wherein the Commission, after a hearing, ordered the suspension from office of France Paris, a member of the Oklahoma Highway Commission, or in lieu thereof that certain federal funds be withheld from the State of Oklahoma upon its refusal to order such suspension. The basis for such order arises by virtue of Title 18, U. S. C. A. 61, and succeeding sections, commonly known as the Hatch Act.

2. The proceedings for a review are admitted by the parties to be regular.

3. On or about January 14, 1943, France Paris was appointed by the Governor of the State of Oklahoma and he took the oath of office and assumed his duties as a mem-[fol. 49] ber of the Oklahoma State Highway Commission. He has held and served in that office continuously since that time.

4. The Oklahoma Highway Commission receives support from and is benefitted in part by funds received from an agency of the federal government and did at all times involved herein.

5. Prior to becoming a member of the State Highway Commission, France Paris had been elected chairman of the State Central Committee of the Democratic Party of Okla-

homa, which position was held by him upon becoming a member of the Highway Commission and was held continuously by him until he resigned on October 18, 1943, as chairman of the Central Committee of the State Democratic Party.

6. Just before January 14, 1943, there had been a general election held in the State of Oklahoma and the elected officials had taken office by that time. The State Democratic Headquarters of the State Central Committee were closed on January 4, 1943, by France Paris, but were later reopened during the year under the direct charge of the vice-chairman of that committee. During the year 1943, there was no state nor national election which concerned the Democratic State Central Committee and it was therefore a quiescent period for political activity. The principal activity of that committee consisted of staging a "Victory Dinner" in the Skirvin Hotel at Oklahoma City, Oklahoma, on June 14, 1943. This dinner was designed to provide the National Democratic Committee and the State Democratic Committee with funds to discharge a deficit incurred by their political activities and to provide funds for contemplated future activities. It also promoted the sale of war bonds and did result in the sale of approximately $14,500,000.00 in war bonds. The dinner netted the Democratic party, which was conceded to be a political party, approximately $30,000.00. The dinner was staged under the general supervision of the Governor of the state and the details were handled by a committee appointed by the Governor. W. G. Johnston was chairman of this committee. France Paris was an ex officio member of the committee and he advised with the Governor concerning the dinner and called [fol. 50] the meeting to order and introduced the toastmaster, but he was not active in planning or arranging the dinner.

7. At no time before starting the proceedings before the Civil Service Commission did any representative of the Civil Service Commission advise either the State of Oklahoma or France Paris that holding the two offices simultaneously constituted a violation of the Hatch Act and, upon learning that the enforcement branch of the Civil Service Commission contended the Hatch Act was being violated, France Paris resigned at once as chairman of the Central Committee of the State Democratic Party.

8. France Paris is not an attorney. At the hearing before the Civil Service Commission, his attorneys offered to show that prior to the time he became a member of the Oklahoma Highway Commission he consulted private counsel, as well as others, and was advised by them there would be no violation of the Hatch Act for him to serve in both capacities. That tender was refused by the Examiner upon the theory that it was not material. It is not shown by the record who the "others" consulted were, but in the arguments before this Court it was conceded by both sides that among those consulted were the Governor of the State of Oklahoma and the United States District Attorney for the Western District of Oklahoma. There was no evidence indicating that he consulted with or sought the advice of the Civil Service Commission.

9. Prior to the effective date of Title 18 U. S. C. A. § 618, the Civil Service Commission had ruled that service on a political committee constituted a violation of the Hatch Act, and such ruling had appeared in a pamphlet published and circulated by the Commission.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.

2. Title 18 U. S. C. A. (§ 12) does not contravene or violate the Tenth Amendment to the Constitution of the United States. Stewart v. United States Civil Service Commis- [fol. 51] sion, 45 F. Sup. 697; United States v. Wurzbach, 280 U. S. 396.

3. Service as chairman of the Central Committee of the State Democratic Party while also serving as a member of the Oklahoma Highway Commission constitutes a violation of the Hatch Act.

4. The Court does not agree with the majority of the Civil Service Commission with respect to the punishment inflicted. The order, requiring the State of Oklahoma to remove Paris or the withholding of federal funds, by the majority of the Commission appears to be unduly harsh. But the violation having been established, the penalty to be invoked was within the discretion of the Commission. This Court is without power to substitute its judgment for that of the Commission.

5. The order of the majority of the Civil Service Commission is according to law and there are no disputed questions of fact for the Court to review since all the facts were stipulated.

6. That section of the Hatch Act dealing with review of orders of the Civil Service Commission to the effect that the review shall "Extend to questions of fact and questions of law" and that clause in the same section requiring the court to affirm the order or determination of the Commission if the same is "in accordance with law" when considered together gives the reviewing court no different or greater authority in reviewing findings of fact of the Civil Service Commission than that which reviewing courts have over findings of fact by administrative tribunals generally. Stewart v. United States Civil Service Commission, supra.

7. The Court concurs fully in the conclusions expressed by President Mitchell of the Civil Service Commission, beginning on page 18 of the transcript of the record, but because of the conclusions already stated the Court is powerless to change the order of the majority of the Commission.

8. The order of the majority of the Civil Service Commission under its docket number 122 and dated September 7, 1944, is therefore affirmed.

[fol. 52] 9. In accordance with the findings of fact and conclusions of law herein, the Clerk of the Court is ordered to enter judgment for the respondent denying the relief prayed for by the complainant, and the order of the Civil Service Commission is affirmed.

Dated this 18th day of June, 1945.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT—Filed June 25, 1945

This matter coming on for hearing this 18th day of June, 1945, in its regular order, and the petitioner and respondent appearing by their respective counsel, and the Court having filed herein its Findings of Fact and Conclusions of Law,

finds that judgment should be entered for the respondent, denying the relief prayed for by the complainant and affirming the order of the Civil Service Commission.

It Is Therefore Ordered, Adjudged and Decreed that judgment be and the same hereby is entered for the respondent and the relief demanded by the complainant be, and the same hereby is denied, and that the order of the Civil Service Commission be, and the same hereby is, affirmed, and the *Clerkos* ordered to enter judgment on the records of his office as of this date.

And It Is So Ordered.

F. E. Kennamer, Judge.

OK As To Form. Randell S. Cobb, Attorney General of Oklahoma, *Attorneys* for Petitioner. Whit Y. Mauzy, U. S. Atty., Attorney for Respondent.

[File endorsement omitted.]

[fol. 53] In United States District Court

Notice of Appeal—Filed July 11, 1945

Notice is hereby given that the petitioner, the State of Oklahoma, appeals to the United States Circuit Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 18th day of June, 1945.

Randell S. Cobb, Attorney General of Oklahoma; Mainard Kennerly, Assistant Attorney General, State Capitol, Oklahoma City 5, Oklahoma, Attorneys for Petitioner.

[File endorsement omitted.]

In United States District Court

Designation of Contents of Record on Appeal—Filed July 11, 1945

The Clerk of the United States District Court for the Northern District of Oklahoma is hereby requested to prepare the record for appeal in this action and to include therein the following:

1. Petition.
2. Answer.

3. Transcript of the Record before the United States Civil Service Commission.
4. Findings of Fact and Conclusions of Law.
5. Journal Entry of Judgment.
6. Stenographic transcript of proceedings had at time judgment was rendered on June 18, 1945.
7. Notice of Appeal.
8. Designation of contents of record on appeal.
[fol. 54] 9. Statement of Points on which appellant intends to rely on appeal.

Randell S. Cobb, Attorney General of Oklahoma;
Mainard Kennerly, Assistant Attorney General,
State Capitol, Oklahoma City 5, Oklahoma.

[File endorsement omitted.]

[The statement of points relied on, filed in the District Court, is identical with the statement which appears at page 1.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS,
TENTH CIRCUIT

ORDER OF SUBMISSION

Fourth Day, November Term, Thursday, November 8th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard and was argued by counsel, Randell S. Cobb, Esquire, appearing for appellant, Joseph M. Friedman, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

Randell S. Cobb, Attorney General, (Mainard Kennerly, Assistant Attorney General, was with him on the brief) for Appellant.

Joseph M. Friedman, Special Assistant to the Attorney General, (John F. Sonnett, Assistant Attorney General, Lawrence V. Meloy, Charles E. P. Crawley, attorneys, Civil Service Commission, and Robert Mandel, attorney, Department of Justice, were with him on the brief) for Appellee.

Before Phillips, Bratton and Murrah, Circuit Judges

Opinion—January 18, 1946

Bratton, Circuit Judge:

Section 12(a) of the Hatch Political Activity Act, as amended, 53 Stat. 1147, 54 Stat. 767, in presently material part, provides, "No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or by any Federal agency shall * * * take any active part in political management or in political campaigns." The applicable part of Section 12(b) provides, "If any Federal agency charged with the duty of making any loan or grant of funds of the United States for use in any activity by any officer or em- [fol. 56] ployee to whom the provisions of subsection (a) are applicable has reason to believe that any such officer or employee has violated the provisions of such subsection, it shall make a report with respect thereto to the United States Civil Service Commission * * * Upon the receipt of any such report, or upon the receipt of any other information which seems to the Commission to warrant an investigation, the Commission shall fix a time and place for a hearing * * * At such hearing * * * either the officer or employee or the State or local agency, or both, may appear with counsel and be heard. After such hearing, the Commission shall determine whether any violation of such subsection has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment, and shall by registered mail notify such officer or employee and the appropriate State or local agency of such determination. If in

any case the Commission finds that such officer or employee has not been removed from his office or employment within thirty days after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any State or local agency of such State, the Commission shall make and certify to the appropriate Federal Agency an order requiring it to withhold from its loans or grants to the State or local agency to which such notification was given an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation * * * Notice of any such order shall be sent by registered mail to the State or local agency from which such amount is ordered to be withheld. The Federal agency to which such order is certified shall, after such order becomes final, withhold such amount in accordance with the terms of such order." And the pertinent part of section 12(c) provides, "Any party aggrieved by any determination or order of the Commission under subsection (b) may * * * institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides, * * * A copy of such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the [fol. 57] record upon which the determination or the order complained of was made. The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law. * * * The court shall affirm the Commission's determination or order * * * if the court determines that the same is in accordance with law. * * * The judgment and decree of the court shall be final, subject to review by the appropriate circuit court of appeals as in other cases, and the judgment and decree of such circuit court of appeals shall be final, subject to review by the Supreme Court of the United States on certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended * * *"

The United States Civil Service Commission filed a letter of charges against France Paris and the State of Oklahoma in which it was charged that Paris, while chairman of the Democratic State Central Committee in Oklahoma,

a political party office, held the office of a member of the Highway Commission of Oklahoma, an activity financed in part by loans and grants made by the United States [illegible]d by a Federal agency thereof; that he was active in the political management of the Democratic Party; and that he assisted in the raising of funds on behalf of such party and in the giving of a banquet. Paris and the State filed separate answers, and a stipulation of facts was filed. It was stipulated that in February, 1942, Paris was elected chairman of the Democratic State Central Committee for his third term, and occupied such position until October, 1943, when he resigned; that he was appointed as a member of the State Highway Commission in January, 1943, and had held the position continuously since; that the activities of the highway department were financed in part by grants made by the Public Roads Administration of the United States; that a Victory Dinner was held in Oklahoma City in June, 1943, for the purpose of raising funds for the Democratic National Committee and the Democratic State Committee; that the dinner netted the Democratic Party approximately $30,000; that it was under the general supervision of the governor of the state; that the details were handled by a committee appointed by the governor; that Paris was an ex officio member of the committee and advised with the governor and the committee concerning the dinner but was not active in planning and [fol. 58] arranging it; that at the dinner, he called the meeting to order and introduced the toastmaster; that employees of the highway department received mimeographed sheets soliciting them to purchase tickets for the dinner at suggested prices, ranging from $5.00 to $25.00; that an employee of the highway department acted as treasurer of the funds received from the sales of tickets for the dinner; that such employee also kept books for the Democratic Party in the state; that about ten days before being appointed as a member of the highway commission, Paris closed the state headquarters of the Democratic State Central Committee; that they were later opened under the direct charge of the vice-chairman of the committee; and that the principal activity of the committee during 1943 was in connection with the Victory Dinner. Upon the stipulated facts, the Commission found and concluded that the service of Paris as chairman of the Democratic State Central Committee while a member of the State Highway

Commission, with the incidental political activities outlined, constituted a violation of section 12(a), supra, and that his removal from the office of Highway Commissioner was warranted. A copy of the order was served on Paris and the State. Thereafter, the State filed its petition in the United States Court for Northern Oklahoma, the district in which Paris resided, seeking to have the order of the Commission vacated and set aside. The Commission answered, judgment was entered sustaining the order of the Commission, and the State appealed.

It is contended that the Act, as applied to state officers or employees, constitutes an attempt to regulate the internal affairs of the state and amounts to an invasion of the sovereignty of the state, in violation of the Tenth Amendment to the Constitution of the United States. The argument is that as a penalty for the violation of its terms, the Act directs the removal of the offending state officer or employee and forbids his appointment or employment in any other capacity for a period of eighteen months, and that therefore it undertakes to usurp a purely state function. It is said that the legislation in effect works the forfeiture of state offices and in that manner invades the powers of the state to create and maintain offices of government according to its own choice. It is the prerogative of a state to create and maintain offices of government according to its own choice, free from interference by the United States. But this Act does not invade the rights of the states in the untrammeled exertion of that attribute of sovereignty. It does not command the removal of a state officer, either by the Federal government or the state. There seems to be little room for confusion of thought when it is borne in mind that fundamentally considered the Act merely attaches conditions to the making of loans or grants to the states or their subdivisions, conditions reasonably designed and adapted to effectuate the purposes of the Act, and provides that on violation of the conditions the loans or grants shall be withheld *pro tanto*. A state is completely free to disregard the finding of the Commission, and to continue its officer or employee or to give him other employment. If that is done, the Act merely authorizes the United States to withhold to a specified extent funds of the loan or grant. It does not undertake to empower the United States itself to remove the officer or employee or to command the

[fol. 59]

state to do so. A condition of that kind attached to the making of loans or grants does not infringe the sovereignty of the state. It does not amount to a usurpation of power, either in the form of objectionable coercion or other forbidden interference. Massachusetts v. Mellon, 262 U. S. 447; Steward Machine Co. v. Davis, 301 U. S. 548.

The argument that the Act, as applied to the facts in this case, amounts to an unconstitutional delegation of authority is untenable. There can be no doubt that Congress had the power to provide by rigid and inflexible language in the Act itself that where a member of the highway commission of a state whose activity is financed in whole or in part by loans or grants made by the United States holds the position of chairman of the state central committee of a political party, an amount of the loan or grant equal to the compensation of the office for two years shall be withheld. But instead of doing that, Congress entrusted to the Commission the administration of the Act under defined policies and established standards. Congress is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is vested by the Constitution. But legislation must quite frequently be adapted to conditions involving details with [fol. 60] which in the very nature of things it is impracticable for the legislative body to deal directly. There is no unconstitutional delegation of legislative or judicial authority where, as here, an Act of Congress lays down policies and establishes standards but leaves to a selected instrumentality of informed judgment and discretion the determination of facts and the reaching of conclusions based upon such facts (subject to judicial review as provided in section 12(c), to which the declared policy of Congress is to apply. Union Bridge Co. v. United States, 204 U. S. 364; Gray v. Powell, 314 U. S. 402; National Broadcasting Co. v. United States, 319 U. S. 190; Sears, Roebuck & Co. v. Federal Trade Commission, 258 F. 307.

The further contention is that the Act is confined to pernicious political activities, and that Paris did not engage in activities of that kind. Stress is laid upon the title of the Act to support the contention in respect of the scope of the legislation. The title of the statute recites that it is an act to prevent pernicious political activities. While the title to an act may be taken into consideration as an aid to construction in case of doubt, it cannot add

to or subtract from the plain meaning of the text. Resort to the title may be had only for the purpose of resolving doubt as to the meaning of the words used in the text in case of ambiguity. Godlett v. Louisville and Nashville Railroad, 122 U. S. 391; Caminetti v. United States, 242 U. S. 470; Strathearn Steamship Co. v. Dillon, 252 U. S. 348; Fairport, Painesville & Eastern Railroad Co. v. Meredith, 292 U. S. 589; Bengzon v. Secretary of Justice, 299 U. S. 410; Maguire v. Commissioner, 313 U. S. 1. Section 12(a), supra, forbids any officer or employee of a state or local agency whose principal employment is in connection with any activity financed in whole or in part by loans or grants made by the United States to take any active part in political management or in political campaigns. The statute does not speak of pernicious political activity as distinguished from other kinds of political activity. It includes any active part in political management and any active part in political campaigns. That pivotal language is clear and free from doubt. There is no obscurity or uncertainty in the text to be illumined by reference to the title.

The remaining contention which calls for consideration [fol. 61] is that the stipulated facts showed merely passive and inactive holding of the political chairmanship, that the drastic order of the Commission was not warranted, that the order was arbitrary and constituted an abuse of discretion, and that the court erred in sustaining it. It is said that the primary purpose of the Act was to discourage corrupt political practices by authorizing orders designed to effect the removal from public office or public employment of those who violate its provisions, and that removal should be effectuated only where the person has committed serious acts of commission against its provisions. As has already been said, section 12(b) empowers the Commission to determine whether a violation has occurred, and, if so, whether removal from office or employment is warranted. Section 15 provides that the provisions prohibiting the taking of any active part in political management or in political campaigns "shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil

service rules prohibiting such employees from taking any active part in political management or in political campaigns." And for a long time prior to the date on which the Act, supra, became effective, the Commission had consistently held that service on a political committee constituted a violation of the applicable civil-service rule and warranted removal of the person from the position in the classified civil service. Thus Congress in effect provided in the Act itself that service on a political committee while an officer or employee of a state or local subdivision whose principal employment is in connection with an activity financed in whole or in part with funds furnished by the United States constitutes political management within the meaning of the Act and warrants removal from the office or the employment. That in effect is the command of the Act. Manifestly, the Commission had solid footing in the Act for the conclusion that removal of Paris from office was warranted. And section 12(c), supra, provides that in a proceeding of this kind, brought to review the action of the Commission, the determination or order shall be affirmed if it is in accordance with law.

[fols. 62-63] The judgment of the district court is Affirmed.

A true copy.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT

Forty-first Day, November Term, Friday, January 18th, A. D. 1946. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

On February 23, 1946, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion

and judgment of said court, was issued to the United States District Court.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 64] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 27, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, and the case is set for argument immediately following No. 34.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on cover: File No. 50,801. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 84. State of Oklahoma, Petitioner, vs. United States Civil Service Commission. Petition for writ of certiorari and exhibit thereto. Filed April 11, 1946. Term No. 84 O. T. 1946.